JUL 7 1944
CHARLES ELMORE CROPLEY
CLERK

No. 238

In the Supreme Court of the United States

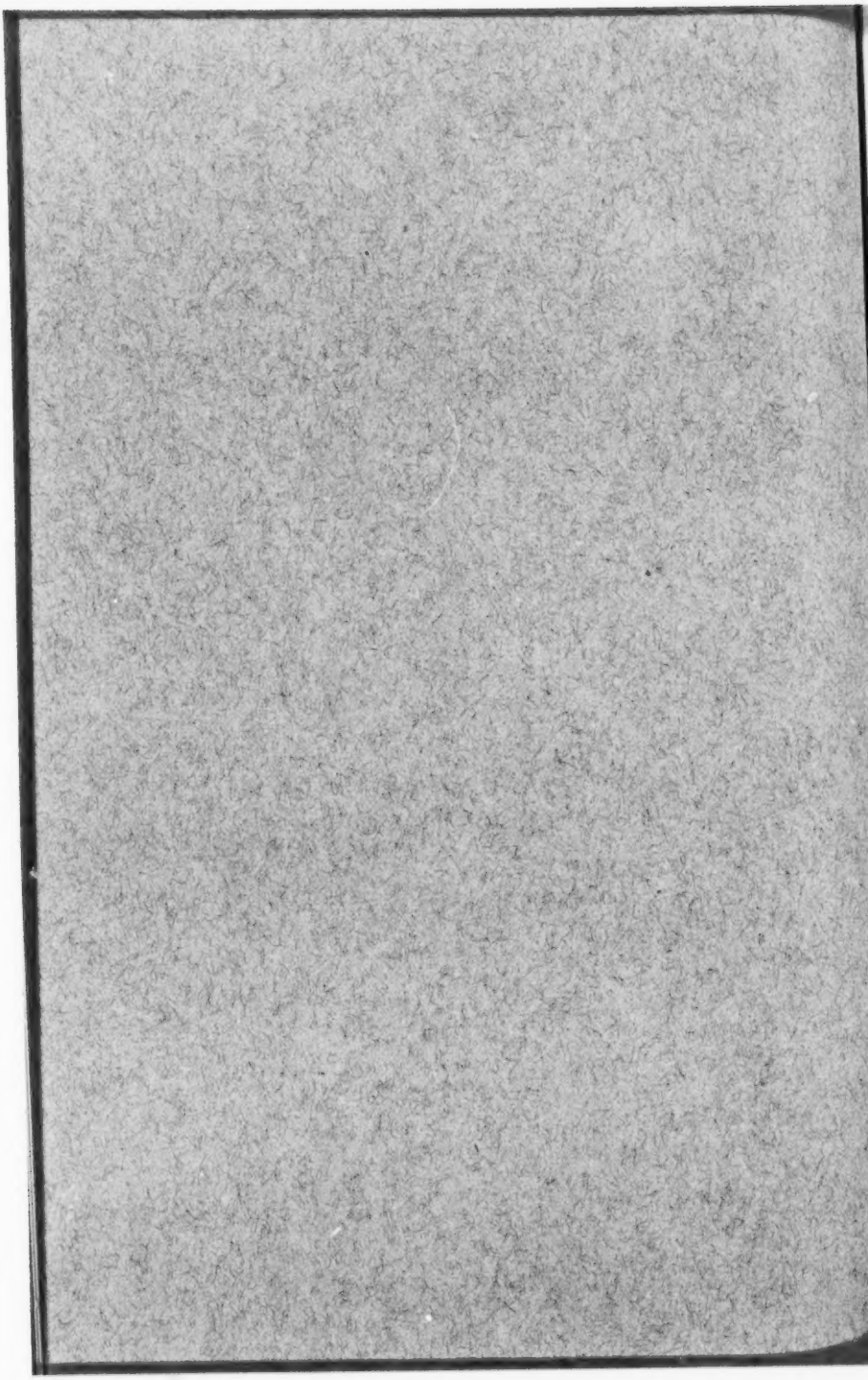
OCTOBER TERM, 1944

SELDON R. GLENN, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

ELEANOR BEARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT



INDEX

CITATIONS

597867—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 238

SELDON R. GLENN, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

ELEANOR BEARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of Seldon R. Glenn, Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit, entered in the above cause on March 20, 1944, affirming the decision of the District Court of the United States for the Western District of Kentucky.

OPINIONS BELOW

The opinion of the district court (Conclusions of Law, R. 109–111) is not reported. The opinion of the circuit court of appeals (R. 115–117) is reported in 141 F. 2d 376.

JURISDICTION

The judgment of the circuit court of appeals was entered on March 20, 1944. (R. 117.) An order extending the time within which to apply for a writ of certiorari until July 7, 1944, was entered on June 16, 1944. (R. 118.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question for decision is whether certain persons engaged in performing needlework in their homes for the taxpayer were her employees within the meaning of Section 907 (c) of the Social Security Act and Section 1607 (c) of the Internal Revenue Code.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 23–26.

STATEMENT

Respondent brought this action for refund of taxes levied and collected by petitioner under Title IX of the Social Security Act and subchapter (c) of chapter 9 of the Internal Revenue Code, for the years 1938 and 1939. The tax was levied with respect to amounts paid by respondent to homeworkers, and the sole issue was whether those homeworkers were employees of respondent

within the meaning of the taxing provisions. (R. 102–103.)

The facts pertinent to the question here involved, as found by the trial court, are substantially as follows (R. 103–109):

The taxpayer, Eleanor Beard, at the times herein involved, and since 1921, conducted a business of producing and selling comforters, quilts, and similar articles which were made by hand by various individuals engaged by her. Her principal studio for the production of these goods was at Hardinsburg, Breckinridge County, Kentucky. The persons who were engaged in the production of these articles were, in part, from twelve to eighteen of them, those who worked in the studio and, in part, those who did their work at their own homes. (R. 103.)

The taxpayer's methods were as follows: A design for an article was determined upon by the taxpayer which was stamped upon the material to be used and specifications dealing with the work to be performed were decided upon. The article was then taken to the receiving room where material and thread were wrapped with it. The specifications or instructions were placed upon a work ticket attached to the bundle. The bundle was then delivered to a homeworker who wished to do the work and who took the bundle from the studio to her home. The taxpayer furnished no tools, or needles, to the homeworker,

who was required to furnish her own frame, needle, thimble, and any home-made stand for supporting or suspending the article. (R. 103.) At the time of the delivery of the bundle to the homeworker the following contract, with blanks filled in to meet the facts in the case, was signed by both the homeworker and the taxpayer (R. 104):

HARDINSBURG, KENTUCKY, _____ 19____.

WORK CONTRACT

THIS AGREEMENT, made and entered into in duplicate, on the above written day between _____, herein called First Party, and ELEANOR BEARD, herein called Second Party.

WITNESSETH THAT:—

First Party herewith acknowledges that she has this day received from Second Party the following materials:

First Party agrees to work same according to specifications given by Second Party, which specifications are attached hereto and made a part hereof as fully and to the same extent as if copied herein at length, and upon the completion of the work required in said specifications and not later than _____ days from the date hereof, to return said materials to Second Party.

Second Party agrees that said work may be done at such times within the period hereinabove allowed and at such places as are agreeable to First Party, and further

that First Party may do said work either personally or by agents of her own selection.

Upon First Party's completing the specified work upon said materials to the satisfaction of Second Party and redelivering to Second Party the completed work and all unused portions of said materials Second Party agrees to pay First Party for said work a total price of $----------.

From the time of the delivery of said materials by Second Party to First Party, and until the redelivery of said materials to Second Party, First Party shall be liable for the loss or ruin of, or damage or injury to, said materials.

IN TESTIMONY WHEREOF witness the signature of the parties hereunto affixed the day and year first hereinabove written.

----------First Party.

By----------Second Party.

ELEANOR BEARD.

Original.

A signed copy of the contract was given to the homeworker and a signed copy retained by the taxpayer. This written contract was first used by the taxpayer some time in the summer of 1936 but merely put in writing the form of contract that had been orally entered into prior to that time by the taxpayer and the homeworkers in the production of these goods. The price to be paid for the completed article was originally fixed by the homeworker and if, in the opinion of the

homeworker, it developed that it was not enough, the homeworker discussed the matter with the taxpayer and a price was agreed upon satisfactory to both parties. Thereafter, prices were fixed by comparison with the prices previously paid for similar work, with more difficult designs getting higher prices and with adjustments being made with the homeworker when the work proved more difficult than had been expected. (R. 105.)

No designing was done by the homeworker, who was required to follow strictly the design and specifications furnished to her. If the price eventually fixed by the taxpayer for a certain article was not satisfactory to the homeworker, the homeworker did not take that particular piece of work but took such work as carried a price which was satisfactory to her. Each homeworker more or less controlled the time in which the work was to be completed by an estimate made at the time when the work was received of the number of days constituting a reasonable time for the completion of that kind of work. When the work on the particular article was completed by the homeworker it was returned by her to the studio where it was inspected to see if it complied with the specifications and if the work was satisfactory. If the article passed this inspection, the homeworker's vouchers were approved and handed to the check writer who paid the

homeworker the amounts specified in the contract. The completed article was then sent to the shipping room where it was cleaned if necessary and packed and shipped. (R. 105.)

If the inspection showed that the work had not been completed according to the specifications or with acceptable workmanship, it was not approved and payment was withheld. The homeworker was offered an opportunity to do it over but usually did not do so and, accordingly, receive no compensation. In those cases, it was usually completed by someone in the studio. The articles so completed are highly artistic and sell to the luxury trade. (R. 105–106.)

There were over one thousand women doing such home work for the taxpayer and other competing businesses in the three or four counties in that part of Kentucky. In 1938 and 1939, approximately 300 homeworkers did work for the taxpayer but, in other seasons which were not so busy, the number dropped to 200 or 150. From 25% to 30% of these homeworkers had been doing the work for ten years. Contact by the taxpayer with the homeworkers was sometimes made by advertising the fact that work was available for homeworkers and sometimes by asking homeworkers to tell others that such work was available if they desired to do it. (R. 106.)

The homeworkers were usually the wives and daughters of farmers living on farms which were

59.7867—44——2

within a radius of from 20 to 25 miles of the studio. These women had their usual farm duties to perform. Accordingly, such a homeworker did not work steadily throughout the year and would not accept the work at certain periods when her farm duties did not leave time to do such work. These homeworkers did the work at odd times when they were not otherwise employed in their farm duties and at night after the evening meal. The busy season for the taxpayer was from September 15th to December 15th, at which time farm work was comparatively slack. (R. 106.)

There were some half dozen or more companies engaged in the same type of work as the taxpayer in the same general locality in Kentucky who were competitors with each other and with the taxpayer. All of them used homeworkers in more or less the same general way. Some of the homeworkers who did work for the taxpayer would upon the completion of a job for the taxpayer take work from one of taxpayer's competitors instead of taking work from the taxpayer and at times a homeworker would have work from the taxpayer's studio and a competing studio in her home at the same time. (R. 106–107.)

There was no requirement on the part of the taxpayer that a homeworker should work exclusively for her, either over any stated period of time or during any period of time when she was working for the taxpayer. There was no re-

quirement that homeworkers take and complete any certain amount of work, the amount being taken by a homeworker being determined by what she was willing to take and wanted to take and could be returned in a reasonable time. It was not necessary for a homeworker to call in person at the studio to get the work and one homeworker would frequently go to the studio and get bundles for both herself and other homeworkers living in the same general locality to whom she would distribute the bundles. The homeworker who received a bundle at the studio signed the contract in her own name and was responsible for the return of the work according to the agreement with the studio. In many instances, the studio did not know and was never advised as to which homeworker actually received the different bundles and performed the work. (R. 107.)

In some instances, the work was sent to homeworkers by mail. In order for a homeworker to take work from the studio to her home, it was first necessary that she qualify as to workmanship. The homeworkers did no work at the studio and spent no time at the studio except in receiving and returning the work. (R. 107.) There was no requirement by the studio that the particular worker who received the bundle and signed the contract for the work do all of the work under that contract but it was permissible, and it frequently happened, that one member of the family

who received the bundle would pass it around to other members of the family for work by them at such times as they wished to do such work and had the time available in which to do it. This practice was extended between the neighbors. (R. 107–108.) Any division of compensation between the receiving homeworker and the contributing homeworkers was a matter entirely between the homeworkers with which the taxpayer had no connection and about which the latter usually knew nothing. (R. 108.)

The taxpayer did not exercise any control or supervision over the homeworkers or over the work while it was being done. It was left entirely to the judgment and wishes of each homeworker as to the number of days in any week or month that she would devote to the work and as to the number of hours in any day which she would devote to the work. No employee of the studio or of the taxpayer visited the homeworker to inspect the progress or quality of the work while it was being done or to supervise the actual doing of the work. The taxpayer retained and exercised the right to judge whether or not the work when completed by the homeworker and returned to the studio complied with the design and specifications and if the work was of satisfactory quality and to refuse to accept as performance under the contract the returned article unless it did satisfactorily meet those require-

ments. The studio looked exclusively to the finished article when it was returned in determining whether or not the homeworker's contract had been performed and the contract price was payable. (R. 108–109.)

The studio had no right to withdraw the work from a homeworker while it was being worked upon and within the time limit provided by the contract. Both the studio and the homeworker had the right, and exercised it, either to enter into another contract for a succeeding piece of work when one bundle was finished and returned, or to decline to give or take another piece of work. Each piece of work was handled as a separate and distinct contract between the studio and the homeworker. (R. 109.)

Upon these findings the district court held that the homeworkers were not employees of the taxpayer. The circuit court of appeals affirmed, holding that the common-law test of control was determinative and had not been met.

SPECIFICATION OF ERRORS TO BE URGED

1. The circuit court of appeals erred in holding that the homeworkers engaged in performing services in the taxpayer's business were independent contractors and not employees within the meaning of the Social Security Act and corresponding provisions of the Internal Revenue Code.

2. The circuit court of appeals erred in failing to hold that the taxpayer was liable for social security taxes based upon the wages paid to her homeworkers.

3. The circuit court of appeals erred in affirming the judgment of the district court.

REASONS FOR GRANTING THE WRIT

1. The dicision below involves an important question of federal law which has not been passed upon by this Court.

The question whether a person is an employee of another, within the meaning of the Social Security Act, is fundamental in the application of the statute and its importance overshadows all other questions in the administration of the Act. The legal concept of the employment relationship, for purposes of the Act, is the subject of widespread litigation, and clarification by this Court would be in the public interest.

There are now pending in the federal courts over sixty suits in which the substantial question turns on the meaning of the term "employee" as used in the Act. The majority of these cases involve situations where the employment is continuous—though subject to instant termination—but the services are performed away from the premises of the employer and the compensation is on a production basis. Some examples besides homeworkers are: Outside salesmen, abstract digesters, wood cutters and haulers, "coal hustlers,"

taxicab drivers, roofers, fishermen, and truck drivers. Many more potential cases are now in the administrative stage before the Treasury Department and the Social Security Board.[1] In relation to industrial homeworkers alone, the problem is of substantial proportions.[2]

The present case arises under Title IX of the Act, dealing with the unemployment compensation tax. Decisions interpreting the definitions of employment thereunder are of persuasive in-

---

[1] The Treasury Department advises that, although its records are not so kept as to show the facts on which claims for refund are based, of the 5,000 pending claims for refund, abatement or credit, it is estimated that 2,000 claims turn upon the question of whether persons are employees or independent contractors. Of the approximately 5,900 claims disallowed during the year 1943, it is estimated 2,500 were based on the same contention. The estimates made by the Treasury Department do not reflect the extent of the problem as it relates to assessments, delinquencies, and field investigations resulting from the uncertainty as to the meaning of the term "employee" as used in the Act.

The Social Security Board advises that, in administering the benefit provisions of the Act, it had determined prior to December 31, 1943, about 42,500 cases involving a question of the employer-employee relationship. There are now pending about 2,600 such cases, of which 1,700 are "outside salesman" cases, as to which an authoritative decision in the present case would have a distinct bearing.

[2] It has been estimated that in 1935 there were 77,000 homes in which commercialized homework was being done. U. S. Dept. of Labor, Women's Bureau, Bulletin No. 135, p. 15. Fragmentary figures indicate that in the quilting and candlewick bedspread industry there are between 9,000 and 10,000 workers employed by commercial concerns in the manufacture of such articles. *Id.*, Bulletin No. 128; p. 40.

fluence upon the states in administering and interpreting definitions of employment in state unemployment compensation statutes. See, *e. g.*, *Commercial Motor Freight, Inc.* v. *Ebright*, 143 Ohio State 127, 138.[3] Moreover, the definition of employment in Title IX is the same (save for certain differences in exemptions not here material) as that in Titles II and VIII, dealing, respectively, with old age benefit payments and the federal old age benefit tax. The interrelation of the taxing and benefit provisions, the importance of tax returns in furnishing wage records to the Social Security Board, and the binding effect given to those records by the statute, give the decision below an unusual importance from the standpoint of the Government, the taxpayers, and potential claimants of benefits.[4] Because of these factors it

[3] The court there said:

"* * * If, under the circumstances of this case, the federal courts should hold that the federal act does not apply to the situation here presented on the ground that the owner-operators were not employees of the appellant, this court would feel disposed to follow the holdings of the federal courts on this question. It would be anomalous and discriminatory to require an employer to pay the state unemployment assessments and not enjoy the corresponding benefits of the federal act."

[4] The definitions are found in Sections 209 (b) of the Act, as amended by Section 201 of the Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, 1373, and Sections 1426 (b) and 1607 (c) of the Internal Revenue Code, as amended by Sections 601 and 614 of the Amendments of 1939, c. 666, 53 Stat. 1384, 1393. If the decision below becomes final, taxes will not be collected from this, or similar, employers located in the Sixth Circuit. No individual wage records will be available for posting by the Social Security

is believed that irremediable prejudice would result if an endeavor to secure review by this Court of the question here involved were deferred.

2. In holding that "the Act took over the term 'employee' as the common law knew it" (R. 116),

---

Board, since these are secured from the tax returns. Without evidence of wage payments the Board cannot allow benefit payments upon employee retirement. Section 205 (c) of the Act, as added by Section 201 of the Amendments of 1939, 53 Stat. 1369. The Board would be obliged either to seek wage records from such employers or from each of the employees in question, or to disallow benefit claims in this Circuit while allowing them elsewhere. Even if the Board were to accept the first decision rendered as controlling nationally, the benefit claimants would not be precluded from raising the issue. Cf. *Carroll* v. *Social Security Board*, 128 F. (2d) 876, 881 (C. C. A. 7); *Walker* v. *Altmeyer*, 137 F. (2d) 531 (C. C. A. 2). The Board would then be obliged to pass upon claims where wage records would be only partially available. Finally, the statute would bar claims for benefits where they were made more than 4 years after the wages were alleged to have been paid and where the records of the Board did not disclose such wage payments. Section 205 (c), as added by Section 201 of the Amendments of 1939, 53 Stat. 1369, provides in part:

"(2) After the expiration of the fourth calendar year following any year in which wages were paid or are alleged to have been paid an individual, the records of the Board as to the wages of such individual for such year and the periods of payment shall be conclusive for the purposes of this title, except as hereafter provided.

* * * * *

"(4) After the expiration of such fourth year, the Board may revise any entry or include in its records any omitted item of wages to conform its records with tax returns or portions of tax returns (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or the Federal Insurance Contributions Act or under regulations made under authority thereof. * * *"

the court below adopted, it is submitted, an erroneous view of the coverage of the statute.

We think the court erred in premising its decision on the proposition that the common law gave to the term some all-embracing meaning which applied regardless of the nature of the ultimate question involved.[5] What the court did, in fact, was to attribute to the term, as its common law meaning, the so-called "control test" which is commonly, but not always, applied to distinguish an "employee" from an "independent contractor" for purposes of vicarious liability in tort. *National Labor Relations Board* v. *Hearst Publications,* Nos. 336–339, last term, decided by this Court April 24, 1944; Restatement of the Law of Agency, Sec. 220. Assuming, however, that the term "employee" has a single and precise meaning at common law, we believe that the court erred in applying the common law limitations to this statute and in failing to interpret the term, as used here, in the light of the purposes of the Act.

This Court and others have recognized that "employee" is a word which "is not treated by

[5] In speaking of "the term 'employee' as the common law knew it," we assume that the court was referring to the common law meaning of the term "servant." While the term "employee" may not have been unknown to the common law, the English cases do not indicate that it was in frequent usage in those courts. Its development appears to have been contemporaneous with the development of modern employment relationships with all of their complexities of arrangement. Cf. *Cudahy Co.* v. *Parramore*, 263 U. S. 418, 423.

Congress as a word of art having a definite meaning." *United States* v. *American Trucking Ass'ns,* 310 U. S. 534, 545, n. 29. Rather, "it takes color from its surroundings" (*id.* at 545) and derives meaning from the context of the statute, "which must be read in the light of the mischief to be corrected and the end to be attained." *South Chicago Co.* v. *Bassett,* 309 U. S. 251, 259; Cf. *Drivers' Union* v. *Lake Valley Co.,* 311 U. S. 91; *National Labor Relations Board* v. *Hearst Publications, supra,* Cf. *Tennessee Coal Co.* v. *Muscoda Local,* 321 U. S. 590, 597. To put it another way, "the word 'employed' * * * must be understood with reference to the purpose of the act, and where all the conditions of the relation require protection, protection ought to be given. * * * Such statutes * * * should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them." *Lehigh Valley Coal Co.* v. *Yensavage,* 218 Fed. 547, 552–553, certiorari denied, 235 U. S. 705. This the court below did not do.

When the history of the Act is examined it is clear that, with enumerated exceptions, it was designed to provide against the distress of unemployment in old age, as well as during the working life of one whose livelihood is earned in the service of another's business. S. Rep. No. 628, 74th Cong., 1st sess., pp. 2, 9–16; H. Rep. No. 615,

74th Cong., 1st sess., pp. 5–8, 16. *General Wayne Inn* v. *Rothensies,* 47 F. Supp. 391 (E. D. Pa.); *Stone* v. *United States* (E. D. Pa.), decided September 16, 1943 (P-H Unemployment Insurance Service, Vol. 1, par. 36,281); *Willard Sugar Co.* v. *Gentsch* (N. D. Ohio), decided March 3, 1944 (C. C. H. Unemployment Insurance Service, Vol. 1, par. 9106). Cf. *Helvering* v. *Davis,* 301 U. S. 619, 641. Such purposes will not be achieved if the statute be limited by the considerations which bear upon the question whether one who hires another is responsible in tort for his wrong doing. Cf. *National Labor Relations Board* v. *Hearst Publications, supra.* Where individuals are engaged to devote their manual labor to the business of another for wages, differences in their place of labor and in the degree of supervision over them should not be controlling in passing on the question of employment for purposes of a statute having as its end economic protection in old age and in periods of unemployment. In providing for such protection and for the sharing of its costs, it is not to be supposed that Congress meant to impose such a controlling differentiation.

To support its decision, the court below relied upon language contained in the Regulations issued under the Act. (Treasury Regulations 90, Art. 205, Appendix, *infra.*) It is true that they contain some of the generally accredited determi-

nants frequently found in tort cases. *Texas Co.* v. *Higgins,* 118 F. (2d) 636, 639 (C. C. A. 2). But the Regulations, taken as a whole, do not support the narrow view given to them by the court.

The Government does not contend that the term "employee" has some entirely new and different meaning previously unknown to the law, including the law of torts. Persons who are obviously employees fall within general rules as well as do independent contractors. These employment relationships constitute what may be termed the well-defined areas of the law of master and servant. It is these areas which the Regulations purport to cover, for they preface their statements concerning both "employee" and "independent contractor" with the words "generally" or "in general." The Regulations, like the statute itself, do not list industrial homeworkers as independent contractors or as outside the scope of the employment relationship. In illustrating the class of independent contractors, the Regulations refer to "physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public." The individuals in the present case are not characterized by a similar latitude of professional judgment or by a similar maintenance of an independent estab-

lishment. Petitioner was not a customer or client of the homeworkers; on the contrary, the latter are more naturally regarded as her employees, if the term, as stated in the Regulations, is to be given its "ordinary meaning."

3. While the legal test laid down by the court below is our primary concern in seeking review, it may be added that even if the so-called common law tests be applied, the homeworkers should have been held to be employees rather than independent contractors. In our view, the amount of control exercised by the taxpayer over them requires this conclusion. Cf. *Singer Manufacturing Co.* v. *Rahn*, 132 U. S. 518. The court below seems to have given undue weight to the fact that, as persons not working on the taxpayer's premises, the homeworkers' activities were not controlled to the same extent as are those of inside workers.[6] But where the nature of the work is such that no detailed supervision is required many courts have held that a lack of such supervision is of no significance and does not convert one who otherwise is an employee into an independent contractor.[7] There still remained in the taxpayer that right of control over the worker which stems

[6] But see the testimony of Mrs. Rhodes who worked both in the studio and in her home (R. 78–84).

[7] *Allied Mutuals Liability Co.* v. *DeJong*, 209 App. Div. 505, 205 N. Y. S. 165, 167; *Andrews* v. *Commodore Knitting Mills*, 257 App. Div. 515, 13 N. Y. S. (2d) 577; *Allaby* v. *Industrial Comm.*, 200 Wis. 611, 614; *Fischer* v. *Industrial*

from the right of discharge if any direction given is not obeyed. Cf. *Messmer* v. *Bell & Coggeshall Co.*, 133 Ky. 19, 25; 1 Thompson, *Negligence* (2d Ed.) 579. In the final analysis that is the only right of control which any employer has over his employee. Here, the dismissal may be characterized as a refusal to furnish work (R. 41–42) but it remains nothing less than the ordinary discharge of an employee. Cf. *Peasley* v. *Murphy*, 381 Ill. 187; *Schomp* v. *Fuller Brush Co.*, 124 N. J. L. 487. In short, even under the common law, the homeworkers' type of work, form of compensation, and relationship to the public, had no similarity to that of a lawyer, physician, engineer, construction contractor, broker, or businessman whose relationship with his clients or customers is traditionally characterized by a genuine independence from detailed control and supervision distinguishing the independent contractor from the employee. *Glielmi* v. *Netherland Dairy Co.*, 254 N. Y. 60.

Commission, 301 Ill. 621, 629; *Linnehan* v. *Rollins*, 137 Mass. 123; *Arkansas Power & Light Co.* v. *Richenback*, 196 Ark. 620; *Begovac* v. *Northwestern Cooperage & Lumber Co.*, 264 Mich. 508; *Kehrer* v. *Industrial Commission*, 365 Ill. 378; *Bradley* v. *Republic Creosoting Co.*, 281 Mich. 177; *Reigel* v. *J. B. Finch Timber Co.*, 182 Minn. 289; *Jones* v. *Goodson*, 121 F. (2d) 176 (C. C. A. 10); *Pure Baking Co.* v. *Early* (E. D. Va), decided April 24, 1943 (C. C. H. Unemployment Insurance Service, Vol. 1, par. 9062); *Liberatore* v. *Friedman*, 224 N. Y. 710, affirming 185 App. Div. 900 without opinion; *Buell & Co.* v. *Donaher*, 127 Conn. 606; *Fleming* v. *G & C Novelty Shoppe*, 35 F. Supp. 829 (N. D. Ill.).

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

JULY 1944.